non-bailable offence. Every single day, there are hundreds and thousands of instances of simple hurt by sharp weapons. But it is still a simple hurt. Now, if you are going to be making this also as non-bailable, it would only add to the burden of the courts; bail would continue to be denied; and, this would be contrary to justice Krishna Ayer's judgement given as early as 1977 that bail is the rule and jail is an exception. This amendment does not do justice to the salutary principle hallowed by every international convention. Please, Sir, I implore upon you not to push this Amendment Bill as it is. I know it has taken 11 years. Let it take another couple of weeks or two or three months. Please give it your very personal attention. It does not do justice to the spirit that emanates this amendment. With these words, I thank you, Sir.

STATEMENT BY MINISTER

MR. DEPUTY CHAIRMAN: Hon. Members, the Statement by the Defence Minister is listed after the business is over. The hon. Minister wants to make the statement. I would like to take the sense of the House.

SOME HON. MEMBERS: Yes.

MR. DEPUTY CHAIRMAN: Mr. Minister please read the statement.

An article appeared in Outlook Magazine about visit of Justice S.N. Phukan Commission to Pune and other places

THE MINISTER OF DEFENCE (SHRI PRANAB MUKHERJEE): Sir, with your permission I would beg to state that the issue of the Outlook magazine dated 9th May 2005 has commented adversely on the visit of Justice S.N. Phukan Commission to Pune and other places. In this connection I would like to place the facts before the Hon'ble Members.

2. Hon'ble Members may kindly recall that the Commission was looking into 14 items relating to the Ministry of Defence which included:

I.	T-90S Tanks
II.	Tank Navigation System Upgunning of 130mm Field Guns Krasnopol

III.	Armoured Recovery Vehicle Simulators for the Army Kornet-E
IV.	Light weight Binoculars
V	Hand Held Thermal Imagers image Intensifier Tubes
VI.	Rocket Launcher Mk-II Sukhoi-30 Aircraft
VII.	Barak Missiles
VIII.	Advanced Jet Trainer
DC	T-90S Tanks
X	Tank Navigation System Upgunning of 130mm Field Guns Krasnopol
XI.	Armoured Recovery Vehicle Simulators for the Army Kornet-E
XII.	Light Weight Binoculars
XIII.	Hand held Thermal Imagers image Intensifier Tubes
XIV.	Rocket Launcher MK-III Sukhoi-30 Aircraft

3. (i) The matter regarding a visit by the Commission to see the equipment listed above had come up for discussion several times during the hearings before the Hon'ble Commission.

(ii) In view of the anticipated visit an order dated 16.12.03 was issued to the Service HQrs and concerned officers in the ministry of Defence to prepare for the visit. A request was made to the Service HQrs to prepare a detailed programme and to send it to the Ministry by 19th December 2003.

(iii) Air HQrs moved Joint Secretary (G/Air) on 17.12.03 to seek the approval of Raksha Mantri for providing Service aircraft.

(iv) On 19th December 2003 Secretary of the Commission, wrote a letter to the Ministry of Defence that "pursuant to a submission made by the learned Counsel for the Union of India, Hon'ble Chairman has directed that equipment relating to the past

defence transactions located at various places my be inspected. Accordingly, Hon. Chairman along with the team of counsels for the Commission and officers of the Commission shall visit Pune, on Ahmednagar, Bangalore and Mumbai starting 22nd December, 2003 to 27th December, 2003".

(v) On 22.12.03 the then Raksha Mantri approved the provision of an IAF Service aircraft.

4. On 22.12.03 Justice S.N. Phukan accompanied by Mrs. Phukan and 8 officers listed below under took the visit:

(i) Shri Vijay Hansaria, Senior Counsel

(ii) Shri Yogesh Malhotra

(iii) Shri Pragyan Sharma

(iv) Shri Rahul Bezbaruha

(v) Shri S.K. Dasgupta, Secretary of the Commission

(vi) Shri 3p Mehta

(vii) Shri Suresh Chander Chawla

(viii) Shri S.L. Bunker from the Ministry of Defence

5. The visit was undertaken in a Service aircraft (Avro) to Pune. The visit to Ahmednagar was done in a IAF helicopter. The journey from Pune to Mumbai was made in a Helicopter. From Mumbai to Delhi the journey was made by IL-76 transport aircraft. No visit was made to Bangalore.

6. The Commission visited the shrine of Shirdi from Ahmednagar on 24/12/2003 by road.

7. The instructions regarding use of VIP aircraft were issued by Ministry of Defence on 6/1/1981. *Inter-alia* these instruction are reproduced below.

Entitled Personages

(a) The President, the Vice President and the Prime Minister are entitled to the use of the VIP aircraft.

(b) The following personages are also entitled to the use of the VIP aircraft, if it is essential to do so and an aircraft is available:—

(1) Minister of Defence;

(2) Minister of Home Affairs;

(3) Minister of State in the Ministry of Defence;

(4) Chief of the Army Staff;

(5) Chief of the Naval Staff;

(6) Chief of the Air Staff;

(7) Defence Secretary;

(8) Other Ministers of the Central Government and senior services and civilian officers who are connected with the Defence organisation; and

(9) Cabinet Secretary.

(c) it is expected that, except the President, the Vice President and the Prime Minister, other users will make use commercial air services on official duty, whenever possible.

(d) The aircraft of the VIP flight are to be used on official duty only.

(e) For entitled personages when journey is not for Defence purposes the cost will be recovered according to scales prescribed from time to time.

(f) No recovery will be made in cases where the Competent Authority for reasons of State decides to provide an Air lift.

(g) Normally for visits of a Commission IAF aircraft are not provided.

MR. DEPUTY CHAIRMAN: Now, since, we were considering the Criminal Law (Amendment) Bill, I think we can seek clarifications later.

SHRI JAIRAM RAMESH (Andhra Pradesh): Sir, we wanted to seek clarifications on this statement. *.(Interruptions)...*

श्री मूल चन्द मीणा (राजस्थान): उपसभापति जी, इम्पोर्टेन्ट मामला है **.....(व्यवधान).....** देश की सुरक्षा से संबंधित है **.....(व्यवधान).....**

SHRI NILOTPAL BASU (West Bengal): Sir, the Bill can be taken up tomorrow *...(Interruptions)...*

श्री उपसभापतिः क्लैरिफिकेशन्स बाद में ले लेंगे, अभी बिल चल रहा है **.....(व्यवधान).....**

SHRI V. NARAYANASAMY (Pondicherry): Sir, the rules are very clear in this House. Always we seek clarifications on the statement made by any Minister...*(Interruptions)...*

श्री उपसभापतिः बैठिए.....**(व्यवधान).....** बैठिए **.....(व्यवधान).....**

श्री मूल चन्द मीणाः उपसभापति जी, बिल इम्पोर्टेन्ट नहीं है, यह है **.....(व्यवधान).....**

श्री राजीव शुक्ल (उत्तर प्रदेश)**:** सर, यह समाज की पंरपरा के खिलाफ मामला होगा **.....(व्यवधान).....**

SHRI ANAND SHARMA (Himachal Pradesh): Hon. Deputy Chairman, Sir, from the statement of the hon. Defence Minister, it comes out clearly that it was an unusual practice that was adopted...

MR. DEPUTY CHAIRMAN: Please seek the clarifications.

SHRI ANAND SHARMA: ...and a gross abuse of public funds in making available the Defence aircraft and helicopter which had the specific approval of the then Defence Minister.

Now, my questions to the hon. Defence Minister are these. Propriety demands that when a Commission of Inquiry is set up, the Commission does not seek any favour, nor accepts any favour or hospitality from the person or authority or organisation which the Commission is investigating. That is the basic criterion and ethics demand that. Therefore, was it proper for a Commission that was enquiring against the Defence Ministry or Defence deals to seek and accept that hospitality which requires a personal approval of the Defence Minister?

Secondly, it has impinged on the credibility of the Commission...

MR. DEPUTY CHAIRMAN: Mr. Sharma, you just seek clarifications on the statement.

SHRI ANAND SHARMA: Has such a request and acceptance compromised the credibility and impartiality of the Commission? Though, of course, in my opinion, the Report of such a Commission, which has

compromised its credibility, ought to be rejected. Lastly, the hon. Minister in his statement in para 7(c) said...

MR. DEPUTY CHAIRMAN: You confine your clarifications to the statement.

SHRI ANAND SHARMA: Sir, I am confining myself to the statement. It is said in para 7(c), "It is expected that, except the President, the Vice-President and the Prime Minister, other users will make use commercial air services on official duty, whenever possible." So, is it a fact that when the permission was given, it was originally given for Bangalore, Mumbai, Pune and Ahmednagar as has been stated in the statement and, whether for Mumbai, Pune or Bangalore, regular service flights are available? If so, why a Defence aircraft and helicopter were made available on those routes, which, as per the rules, are barred. Nobody can use that. What needs to be brought on record is about the recovery part. If what has been done is not proper, not covered under the rules; regular service flights were available; and even the destination for which the approval was given, that is, Bangalore was never visited, has any proposal been made for the recovery of the public fund that had been grossly misused in this case?

Sir, my last query is, there are fourteen items for which a request was made for inspection by seeking the sanction of the then Defence Minister. I would like to know from the hon. Minister, was it possible for the Commission to make inspection of these fourteen items in Delhi, near Delhi or at a location where regular flights were available? Was the inspection possible in the Capital?

SHRI ASHWANI KUMAR (Punjab): Sir, I think, this is a matter of great national importance.

MR. DEPUTY CHAIRMAN: Kindly confine to the statement of the hon. Minister.

SHRI ASHWANI KUMAR: Okay, Sir. The first clarification that I would like to seek from the hon. Minister is whether the instructions of 6th January, 1981, limiting the use of the Government aircrafts to the personages specified therein were, in fact, amended? If so, are there any reasons on record justifying the departure from the instructions for the

use of Government aircrafts? Secondly, was there any noting made on the file, or, was there any record or information available that the equipments sought to be inspected could have been inspected in Delhi or around Delhi itself? My last clarification is, whether, under the circumstances, the Government is not considering questioning the very credibility of the findings of the Phukan Commission because justice is not only to be done but is also to be seen to be done? Here is a Commission of Inquiry *...(Interruptions)...* accepting hospitality. What does the Government propose to do?

प्रो0 राम देव भंडारी (बिहार): माननीय उपसभापति जी, मैंने रक्षा मंत्री जी के बयान का ध्यानपुर्वक देखा है और उन्हे सुना भी है। फूकन आयोग .....(**व्यवधान**).....

श्री उपसभापति : आयोग के बारे में बात मत कीजिए।

प्रो0 राम देव भंडारी : उपसभापति जी, मैं सिर्फ यह कहना चाहता हूं कि रक्षा सौदों में जो दलाली हुई थी, उसकी जांच के लिए फूकन आयोग बनाया गया था। इसी फूकन आयोग ने जब पहली रिपोर्ट सबमिट की, तो तत्कालीन रक्षा मंत्री जी को क्लीन चिट दे दी। रिपोर्ट देने से कुछ ही सप्ताह पहले उनकी एक हवाई यात्रा हुई थी, जैसा कि मंत्री जी ने अपने वक्तव्य में कहा है, वे अहमदनगर, पूना, शिरडी गए थे और यह उनकी ऑफिशियल यात्रा थी। अगर यह उनकी ऑफिशियल यात्रा थी, तो उनके साथ पत्नी कहां गई थी?

श्री उपसभापति : आप क्लेरिफिकेशन पूछिए।

प्रो0 राम देव भंडारी: मैं क्लेरिफिकेशन ही पूछ रहा हूं .....(**व्यवधान**)..... अगर यह उनकी ऑफिशियल यात्रा थी, तो इस यात्रा में शिरडी कहां से आता था? महोदय, मंत्री जी ने 14 आइटम्स के बारे में लिखा है , जिनकी जांच हो रही थी । यह भी लिखा है कि इंडियन एयर फोर्स का जो एयरक्राफ्ट है, उसके लिए कौन-कौन enititiled हैं इसे पढ़ाना नहीं चाहता हूं, मंत्री जी ने इसे पढ़ा है .....(**व्यवधान**).....

श्री उपसभापति: आप क्लेरिफिकेशन पूछिए, यहां कोई डिबेट नहीं हो रही है ।

प्रो0 राम देव भंडारी: इनमें न्यायमूर्ति फूकन कहां आते है और वे किस बात की इंक्वायरी करने गए थे? रक्षा सौदों में जो दलाली हुई थी, वे उसकी इंक्वायरी करने के लिए गए थे। वे कोई टैक्निकल आदमी नहीं थे जो इन्क्वायरी के लिए गए थे। महोदय, मुझे इस बात का जवाब चाहिए कि जब वे इसके एंटाइटिल्ड ही नहीं थे तो किस परिस्थिति में, किसने इंडियन एयर फोर्स का हवाई जहाज उन्हें दिया? जब रक्षा मंत्रालय के खिलाफ इन्क्वायरी चल रही थी तो फिर

रक्षा मंत्रालय के जहाज से वे किस प्रकार गए? उनका बड़ा भव्य स्वागत हुआ। जहाम भी गए, रक्षा मंत्रालय के लोग, चाहे एयर फोर्स के लोग हों या आर्मी के लोग हों, जहां जो भी लोग थे, उन्होंने उनका भव्य स्वागत किया, महोदय, आज देश की जनता में इस कमीशन के बारे में संदेह और अविश्वास का वातावरण है।

श्री उपसभापति : राम देव भंडारी जी, डिबेट नहीं चल रही है, कृपया क्लेरिफिकेशन पूछिए।

प्रो0 राम देव भंडारी : आज संदेह और अविश्वास का वातावरण है। महोदय, इस प्रकार कमीशन के चेयरमैने ने जो सुविधा का उपभोग किया है **.....(व्यवधान).....**

श्री उपसभापति: ठीक है। नेकस्ट, श्री नारायणसामी जी।

प्रो0 राम देव भंडारी: और किस प्रकार से उनको एयर क्राफ्ट **.....(व्यवधान).....**

श्री उपसभापति : आपका नाम भी है।

प्रो0 राम देव भंडारी : एयर क्राफ्ट दिया गया है, सारी सुविधाएं दी गई हैं , मेरा पूरा विश्वास है कि यह इन्क्वायरी इम्पार्शियल नहीं है। निश्चित रुप से इसकी क्रेडिबिलीटी संदेह के घेरे में है। मैं रक्षा मंत्री जी से जानना चाहता हूं **.....(व्यवधान).....**

श्री उपसभापति : ठीक है। नारायणसामी जी।

प्रो0 राम देव भंडारी: कि क्या इन्क्वायरी इस कमीशन की जो रिपोर्ट है, उसे रद्द करके वे रि-इन्क्वायरी कराएंगे या सीबी आई से इसकी इन्क्वायरी करांएगे? यह मैं जानना चाहता हूं । धन्यवाद।

MR. DEPUTY CHAIRMAN: Shri V. Narayanasamy. Please seek only clarifications.

SHRI V. NARAYANASAMY: Sir, the hon. Defence Minister has given the Statement in this House after persistent demands from the hon. Members. So, we cannot get satisfied with whatever he says, we want a deep clarification on this subject. *...(Interruptions)...* Hon. Deputy Chairman, Sir, the Statement by the hon. Defence Minister gives rise to various issues and various questions. The then Defence Minister and his Office is being investigated by this Commission. That being the case, how was the Commission given the hospitality, without eligibility, to go in an aircraft; use a defence aircraft? *...(Interruptions)...* This is a very crucial point which I would like to put to the hon. Defence Minister. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Please come to the next point.

SHRI V. NARAYANASAMY: This is number one. *...(Interruptions)...*

Secondly, Sir, under normal circumstances, even Members of Parliament are prohibited from taking their family members or even their wives on official tour of any Committee also. When Justice Phukan took his wife on tour, did the hon. Defence Minister give permission to Mrs. Phukan also? *...(Interruptions)...* Yes, this is the point which has to be clarified. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Mr. Hanumantha Rao, you can speak when your turn comes. *...(Interruptions)...* But don't speak while sitting.

SHRI V. NARAYANASAMY: Sir, a lot of things have been spoken about the Phukan Commission's Interim Report. I am very sorry to say, Sir, the hon. Members from the other side are not here in this House. They have been demanding this Government to submit the Phukan Commission's Report in this House. When they were in power, they were not prepared to do it. *...(Interruptions)...* Kindly permit me, Sir.

MR. DEPUTY CHAIRMAN: I will permit you. But you seek clarification only.

SHRI V. NARAYANASAMY: Sir, without prelude, the question will not come. We have to have a prelude also. I Want to know from the Hon. Defence Minsiter, when serious doubts have been raised about the credibility of Justice Phukan *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: No, no. *...(Interruptions)...*

SHRI V. NARAYANASAMY: Sir, this is explained in the Statement.

MR. DEPUTY CHAIRMAN: Let us observe certain norms. *...(Interruptions)...* Whatever it is, let us also maintain certain norms. *...(Interruptions)...* You seek clarifications only.

SHRI V. NARAYANASAMY: I would like to know from the hon. Defence Minister what is going to be the fate of the Phukan Commission Report in the light of the Statement about the hospitality enjoyed by them. What action will Defence Minister, signed on the file allowing Justice Phukan and other members without eligibility to fly on the aircraft. What action are you going to take against the then Defence Minister? I want the hon. Defence Minister to clarify this.

MR. DEPUTY CHAIRMAN: Okay, okay ...*(Interruptions)*... Now I come to the final point. Sir, when the former Prime Minister and some of the senior leaders used the Defence aircraft, during the election time, or some other time, the Supreme Court gave a clear verdict that the amount should be recovered from them. Therefore, what are you going to do in this regard? I want to know this ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: It is okay. You have raised three points. Next, Shri Rajeev Shukla.

SHRIV. NARAYANASAMY: Sir, these are the clarifications that I seek from the hon. Defence Minister.

श्री राजीव शुक्ल: उपसभापति: महोदय, मैं सीधे-सीधे 3-4 प्रश्न रक्षा मंत्री जी से करूंगा। उनके स्टेटमेंट के सबसे आखिरी सेन्टेन्स में लिखा है कि Normally fo visits of a commission IAF aircraft are not provided. मैं रक्षा मंत्री जी से जानना चाहता हूं कि वे कौनसी abnormal conditions थीं जिन में इस कमीशन को तत्कालीन रक्षा मंत्री श्री जॉर्ज फर्नाडीज साहब ने इस यात्रा को करने की इजाजत दी। नंबर दो , शिरडी की यात्रा प्राइवेट विजिट है, यह खुद उन्होंने माना है। क्या शिरडी विजिट के लिए टी0ए0डी0ए0 का कमीशन के सदस्यों और जितने लोग गए थे, उनको भुगतान किया गया? अगर किया गया है तो क्या उसकी रिकवरी होगी क्योंकि अपने स्टेटमेंट के पॉइंट-(e) में उन्होंने कहा है कि रिकवरी हो सकती है, ऐसा प्रोविजन है। नंबर तीन, जो टीम वहां गयी थी उसमें कितने डिफेंस एक्सपर्ट थे क्योंकि वे डिफेंस equipments के बारे में पता लगाने गए थे? महोदय, यह जो पूरी लिस्ट है, इसमें से कितने डिफेंस एक्सपर्ट थे? ये जो 8 लोगों के नाम हैं, उनमें से कौन-कौन डिफेंस एक्सपर्ट थे, यह भी बताने की कृपा करें? नंबर चार, अगर यह रिपोर्ट संदिग्ध अवस्था में है तो क्या उस पर action taken report लाना उचित होगा? महोदय, जब यह अधूरी रिपोर्ट है और जब इस तरह की संदिग्ध स्थितियां / परिस्थितियां है, तो क्या उस पर action taken report लाना उचित होगा? इस बारे में भी रक्षा मंत्री जी जवाब दें। महोदय, एक बात और कहना चाहता हूं कि कुछ अखबारों और मीडिया में यह बात आयी है कि कोई फुकन नाम का व्यक्ति , यह इंक्वायरी कमीशन बनने के एक महीने पहले दुबई की यात्रा पर भी गया था। क्या ये वहीं फुकन साहब थे, जो दुबई की यात्रा पर गए थे? अगर गए थे, तो उनको वहां पर उनको हॉस्पिटलिटी किसने दी, किसने होटल में ठहराया, किसने जहाज के टिकिट दिए, यह भी सरकार बताने की कृपा करे? धन्यवाद।

SHRI DIPANKAR MUKHERJEE (West Bengal): Sir, first of all, I would like to say that I am sure, whatever question I am going to put, does not give clean chit to either the Executive or the Judiciary, whomsoever it

may concern. That is a very tragic part of it; it is not a frivolous part. My first question is, right from the frivolity, ridiculousness, is about para 3(i). It says, "the matter regarding a visit by the Commission to see the equipment listed above." It is, "To see the equipment listed above." Now, what exactly was to be seen? This is my question. Here, one of the items is Light Weight Binoculars. Light Weight Binoculars were to be seen, as if it was one of the scenes, not inspection, not even experts. What were the Terms of Reference of the Commission? How does seeing the equipment relate to no. (a) (1) and (ii) part of the Terms of Reference? Will the Defence Minister say—anyway the record is the same—whether there is any link between seeing the equipments and the Terms of Reference of this Commission? If it is found that the Terms of Reference do not include seeing the equipment on the spot, will the Defence Minister, in that case, question the credibility of the Report itself? This is regarding the objective of the whole seven days' visit and the eligibility.

My second question is with regard to the executives. Now it is not a question of approval by the Defence Minister. If you look at para 3(iii), it says, "Air Headquarters moved Joint Secretary (G/Air) on 17.12.2003, to seek the approval of Raksha Mantri for providing service aircraft." How is it that the Headquarters moved the Joint Secretary keeping in view para 7(c) which says, "It is expected that, except the President, the Vice-President and the Prime Minister, other users will make use commercial air services on official duty, whenever possible? Or, was it not so? I am sure, it will be. Let it be inquired into as to how the Air Headquarters had moved. Was it a *suo motu* movement from the Air Headquarters, the Joint Secretary knowing fully well that they are not entitled for that? Or, was it on a directive from the Defence Minister, not the approval? What I want to know is, was it a directive from the Defence Minister which had forced the air Force and Air Headquarters to move the Government for the approval of this? That has to be inquired into. Sir, these are the grey areas. That has to be inquired into.

Now, Sir, my third question is, regarding this whole thing. Apart from the fact that Justice Phukan was accompanied by eight officers, Mrs. Phukan had also gone. Now, there is a visit. It is very clear that it is a

personal, private visit. Sir, whatever reimbursement has been paid for that visit to a private person along with the Commission, will the Government ask—it is public money—for reimbursement of that part?

Sir, my fourth and the last question is again on the terms of reference. Whatever is being discussed is frivolous, reidculous; seeing eqipment for seven days! It there any credibility left in the Commission and its report? *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: We can discuss that separately. *...{Interruptions)...* That we can discuss separately. *...(Interruptions)...*

SHRI DIPANKAR MUKHERJEE: Will the Defence Minister now agree that in view of this loss of credibility to this Commission and its activities, this Commission's enquiry would be annulled and a fresh enquiry would be ordered through the CBI into the working of the Commission as well as the conditions under the Commission's Chairman Justice Venkataswami was changed to Justice Phukan. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: The "next is, Shri Jairam Ramesh.

SHRI DEPANKAR MUKHERJEE: Sir, the whole thing has to be enquired into, and a re-look, a re-visit at the Tehelka tapes, Tehelka issue is necessary. Will he do it? *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Clarifications cannot be sought by the entire House, by all the Members because the number of requests that has come is about twenty. Shri Jairam Ramesh. *...(Interruptions)...*

SHRI V. NARAYANASAMY: Sir, it is very important subject. *...(Interruptions)...*

SHRI JAIRAM RAMESH: Sir, I seek the clarificaton from the hon. Defence Minister in light of the debate that is going on the need for probity in public life. Many people have demanded probity in public life and boycotted Parliament. Some others have demanded probity in public life and written to the Finance Ministers on behalf of individual companies, involving tax matters running into crores of rupees, and this is part of that same syndrome.

I have only three questions to ask the hon. Defence Minister. The first question, if the visit to the Shrine of Shiridi Sai Baba was made by road, who paid for the journey? Under what aegis was this journey made and who paid for the journey?

The second question is, in part(g) of para seven, it is said, "Normally for visits of a Commission, IAF aircraft are not provided." It is very clear, Sir. According to the guidelines which have not been changed for the last 24 years, this does not qualify under part(g) of para 7. So, what were the extenuating circumstances which led to a decision to make an exception to clause (g) of para 7?

My third and final clarification is, of the 14 items listed in para 2, which of those items were to be seen in Pune, which of them were to be seen in Ahmednagar, and which of them were to be seen in Bombay?

MR. DEPUTY CHAIRMAN: All the points that are raised are the same. All the three clarifications are the same. There is a repetition. And, again there will be repetition. *...(Interruptions)...*

AN HON. MEMBER: Now, Sir, it is not repetition. *...(Interruptions)...* Sir, aii points are different.

MR. DEPUTY CHAIRMAN: No; this is repetition. *...(Interruptions)...* All are touching the same three points and those three points will be replied. *...(Interruptions)...* Yes; Mr. Darda. *...(Interruptions)...*

PROF. SAIF-UD-DIN SOZ (Jammu and Kashmir): Sir, my point is different. *...(Interruptions)...* Sir, *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: No, I have identified Mr. Darda.

PROF. SAIF-UD-DIN SOZ: Okay; Sir.

श्री विजय जे0 दर्डा(महाराष्ट्र)**:** धन्यवाद, सर। मैं रक्षा मंत्री जी से एक सीधा प्रश्न पूछना चाहूंगा **.....(व्यवधान).....**

श्री उपसभापति : स्पेसिफिक क्वेश्चन पूछिए।

श्री विजय जे. दर्डा: सर, बिल्कुल स्पेसिफिक है, मैं इधर-उधर बिल्कुल नहीं जाऊंगा। क्या आपको इस बात की जानकारी है कि **.....(व्यवधान).....** उन्होने भगवान को भी इसमें घसीट लिया है। **.....(व्यवधान).....** मैं भूतपूर्व रक्षा मंत्री के बारे में कह रहा हूं। **.....(व्यवधान).....**

श्री उपसभापति : नहीं, उनके बारे में मत कहिए। स्टेटमेंट के बारे में कहिए। **.....(व्यवधान).....**

श्री नीलोप्तल बसु: सर, यह ठीक नहीं है। जो आदमी अभी यहां नहीं है, उसके बारे में बोलने की क्या आवश्यकता है? **.....(व्यवधान).....**

श्री विजय जे. दर्डा: ये साई बाबा के यहां गए। रक्षा मंत्री जी साई बाबा के यहां गए और ये सारे आइटम्स, 14 आइटम्स और इसके पहले भी उन्होंने जो कुछ भी कारनामें किए है,उन सब का लेकर, भगवान को बीच में लाकर, साई बाबा का जो पवित्र स्थान है, उसको भी अपवित्र किया और उनको विशेष कार्यवही करने के लिए भेजा गया, इसके बारे में क्या आपके पास कोई जानकारी है और यदि है, तो मैं जानना चाहूंगा कि किस प्रकार से यहा सारा षड्यं त्र रचा गया , ताकि भगवान को और भगवान के सारे पुजारियों को भी उसमें घसीटा जाए। दूसरा मेरा प्रश्न इसमें यह है कि जो कुछ भी उन्होंने खर्चा किया है, जो इलेजिटिमेंट है, क्या वह सारा खर्चा उनसे वसूल किया जाएगा?

श्री उपसभापति : वही पाइंट्स है, वही पैसा वसूली का सबने बोला है। आप फिर वही रिपीट कर रहे हैं। इसमें नया क्या पाइंट है?

श्री विजय जे0 दर्डा: सर, नया साई बाबा का है। साई बाबा का नया लाया है, सर।

श्री उपसभापति: वही जय राम जी बोला , हर मैम्बर ने बोला। अब रीपीट करने से होगा फायदा??

श्री विजय जे0 दर्डा: सर, तीसरा प्रश्न मेरा यहा है कि अभी वह हयूमन एइट्स कमीशन के नॉर्थ ईस्ट में अध्यक्ष है। **....(व्यवधान).....** सर, मैं चाहूंगा कि आप इसके ऊपर क्लैरीफाई करने की कृपा करें। धन्यावाद । .....(**व्यवधान**)....

MR. DEPUTY CHAIRMAN: Now, Shri Motilal Vora.

SHRI JESUDASU SEELAM (Andhra Pradesh): Sir, I wish to make just one point. *...(Interruptions)...*

PROF. SAIF-UD-DIN-SOZ: Sir, I have a point to make *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: No, please *...(Interruptions)...*

SHRI JESUDASU SEELAM: Sir, this point has not been covered *...(Interruptions)...* Sir, this has not been covered *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: No, Mr. Seelam *...(Interruptions)...* Everything has been covered *...(Interruptions)...* It is not possible for everyone to seek clarifications, party-wise *...(Interruptions)...* I shall now ask the Defence Minister*...(Interruptions)...*

SHRI JESUDASU SEELAM: Sir, this question has not been covered *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Usually, clarifications are sought party-wise. So many people wish to speak *...(Interruptions)...* all cannot be allowed *...(Interruptions)...*

PROF. SAIF-UD-DIN SOZ: Sir, I am not saying what they are saying *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: No, Mr. Soz *...(Interruptions)...* Please, cooperate *...(Interruptions)...*

PROF. SAIF-UD-DIN SOZ: Sir, | shall not repeat *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Please, cooperate.Mr. *Soz...(Intenvptions)...*

PROF. SAIF-UD-DIN SOZ: Sir, I shall not repeat what has already been said. I have to make only one point...*(Interruptions)...*

MR. DEPUTY CHAIRMAN: I shall allow you after*...(Interruptions)...*

SHRI MANOJ BHATTACHARYA (West Bengal): Sir, I have only one question to ask.

MR. DEPUTY CHAIRMAN: I am allowing you only because you belong to a different party.

SHRI MANOJ BHATTACHARYA: Sir, one serious matter has come to light following the statement of the hon. Raksha Mantri. This matter has been brought to light by the magazine, Outlook, in a recent issue. I would like to learn from the hon. Minister whether any other undue advantages have .also been given to Justice Phukan, because the issue of credibility of Justice Phukan Commission has been raised over here. It has been raised among the public also as it was published in the Outlook magazine. I would like to know whether the Ministry, or the Government of India, is probing into the matter as to whether any undue advantages have also been given to Justice Phukan, or the Phukan Commission as a whole.

Secondly, I would like to know whether it has been the usual practice during the tenure of the NDA Government to appoint commissions and get the commission's reports in their favour, by giving some undue advantages to the various commissions. These are the questions to which I seek an answer.

MR. DEPUTY CHAIRMAN: Now, hon. Defence Minister to make the reply... .*(Interruptions)...*

PROF. SAIF-UD-DIN SOZ: Sir, this is not fair...*(Interruptions)...*

MR. DEPUTY CHAIRMANI: That may be your judgement. If it is not fair, let it be so. Please, sit down ...*(Interruptions)...* Not everyone ...*{Interruptions)...* It is not possible for the entire House to seek clarifications..(*Interruptions)...* It has never happened...*(Interruptions)...* It has never happened.

THE MINISTER OF DEFENCE (SHRI PRANAB MUKHERJEE): Mr. Deputy Chairman, Sir, I would like to make one point first. Let us not expand the scope of the discussions in the format of seeking clarifications. The formal practice is to seek clarifications in the context of the statement. The job is very simple in the sense that certain issues were raised in the magazine. Hon. Members wanted to ascertain the facts. As a representative of the Government, it is my duty to ascertain the facts and inform the House.which I am doing.

Yes, the facts, which were brought out in the magazine, Outlook, are correct...*{Interruptions)...* It is factually correct that a service aircraft was put into operation for carrying Justice Phukan and his party from here to Pune, and thereafter, the itinerary was Pune to Ahmednagar, and from there to Mumbai. In between, he visited two other places.

I received one information very late and that is why, I could not share it here, along with the statement. That is, apart from Shirdi, which was visited on the 24th, on the 25th the Commission visited Ajanta and Ellora also. Therefore. ..*(Interruptions)...*

श्री विजय जे0 दर्डा: सर, ...(**व्यवधान**).....

श्री उपसभापति: बैठिए, बैठिए। ....(**व्यवधान**)..... दर्डा जी, बैठिए। यह ठीक नहीं है।

SHRI PRANAB MUKHERJEE: Let me complete. I got this information late. That is why, I could not put it in the statement. Statement has to be sent to the Chairman or the Speaker. Thereafter, it is to be translated in Hindi. There are lot of paraphernalia. That is why, I am, sharing this. If hon. Members don't want to have this information, I will not give

it...*(Interruptions)*...The question is whether Justice Phukan did the correct thing, or did not do the correct thing, it is not for me to sit on the judgement; it is for the people to sit in the judgement because in this issue, I read an eminent jurist-Shri Nariman is here-that normally, what I understand-I am not a lawyer-that if somebody is investigated against, the investigating agency does not take any hospitality from the organisation or from the individuals or from the persons concerned, and, here, in this case, the fact of the matter is that certain Defence deals are being looked into and it is not an isolated case. Certain exposure took place through certain tapes. The Commission of Inquiry was appointed under Justice Venkatswamy. Unfortunately-I am emphasising on the word 'unfortunately'-some of us, either in this House or in that House, made some reflections on Justice Venkatswamy that he was serving two Commissions. Therefore, he may favour the Government. The moment this hint was made, Justice Venkatswamy immediately resigned from the Office of the Chairmanship of the Tehelka Commission. Because he thought that a reflection has been made on him. Therefore, while making reflection, we should also be little bit careful. And, thereafter, Justice Phukan was appointed. Dates and everything are known to the hon. Members. I would not like to give them the dates. When it was found that the Commission was taking unusual time, the Government decided not to extend the term of the Justice Phukan Commission beyond 4th of October, 2004, and it has been wound up. One hon. member wanted to know whether the entire matters have been referred to the CB1. The entire matters, Tehelka matters, have been referred to the CBI for investigation. In regard to the Commission's job, actually, in more than one year, Justice Venkatswamy did not find any reason to go and inspect certain places or certain weapon systems. He did not find it necessary. He went through the papers; he went through the witnesses, their deposition. But, every Commission decides its own way of functioning. I am nobody to comment on it. For factual position, of the 14 items, which were to be examined by the Commission during this trip, they inspected seven items, not all 14. Mainly, they inspected Sukhoi aircraft at Pune, tanks and certain other equipments at Ahmednagar, and Barak Missiles at Mumbai. So far as the team, which went with Justice Phukan, is concerned, four of them were Counsels of the" Commission. One was the officer of the Ministry for co-ordination. And, other three were the officers of the Commission itself, and they were not experts. They were lawyers or they were officers. They

were not experts on the weapon system or things. However, perhaps, he thought that he would take the advantage of the persons who were present there, who used these weapons, who knew Pune, who knew we are having the Air Force base. Sukhoi aircraft is being manufactured there. Recently, we have had inaugural flight. Ahmednagar is the Headquarter of the Armours Division and the Western Command is one of the important navel bases. But so far as the team is concerned, which accompanied Justice Phukan, they were lawyers and officers and there were no experts. This was a clarification, which were sought.

Thirdly, Dipankarbabu has raised the question as to how the Air Force came. They were told that you have to make arrangements. Air Force is very disciplined. Nobody can use the Defence aircrafts unless the Defence Minister authorises it, now even the Defence Secretary. It requires the autorisation of the Defence Minister. Each and every file has to be signed by him. Even if myself or my colleague Mr. Shivraj Patil, who are entitled to use the Defence aircraft, but that is, Avro, want to use the Boeing, we shall have to seek the permission of the Prime Minister. Only three persons do not need permission, that is, the Prime Minister, the President and the Vice-President. All others including the Defence Minister and the ' Home Minister who are entitled to have the Defence aircrafts, they have to seek the approval of the Prime Minister for using the Boeing and for using the Avro, they don't require it, they are the competent authority to have it.

But other than the service chiefs, everybody is to require it, and, everywhere it has to be written as to why we are giving. It is not just that I can write that I will take my friend Mr. Depankar Mukherjee by Indian Air Force aircraft or the helicopter. He can accompany me if I go for some official work but there should be reasons and we give reasons, it's not that we don't give. We extend this courtesy to the visiting Generals.

SHRI DIPANKAR MUKHERJEE: My question is as to who asked for it. Did the Commission ask for these Defence aircrafts?

SHRI PRANAB MUKHERJEE: No, if you look at the chronology of the sequence of events, you will find that this idea came during the proceedings of the Commission. It was suggested in the proceedings of the Commission that we have to visit; as in the Standing Committee, members

say that we have to visit Lakshadweep. So, then the Air Force was alert that arrangements have to be made. They said we would make arrangements provided we get the clearance from the Defence Minister. Then, the formal request came from the Secretary of the Commission, and, on 22nd, the day of departure, the Defence Minister approved as I found from the files.

SHRI DIPANKAR MUKHERJEE: It means that the Commission asked for the Defence aircraft. They could have gone by the civilian aircraft. But they have asked *...(Interruptions)...*

SHRI PRANAB MUKHERJEE: Of course, they have asked for it. Either they have asked or the Defence Minister has *...(Interruptions)...*

SHRI DIPANKAR MUKHERJEE: That is what I wanted to know *..(Interruptions)...*

SHRI PRANAB MUKHERJEE: I do not know *..(Interruptions)...* There is no trace in the files *..(Interruptions)...* There is no trace in the files whether the Defence Minister wanted or whether the Commission wanted; there is no record. But from the sequence of events, it appears that the Commission wanted to travel through it, and, on 19th of December, the Secretary to the Commission formally communicated. Therefore, the fact of the matter is that it was an unusual case, and, for an unusual case, you cannot give a reply because nothing is recorded or no records are being maintained. Defence Minister has the authority and he has given the clearance. You have to judge as to what was the effectiveness of it, whether it was proper or improper. I am not sitting on that very judgement; you have to come to your own conclusion. My job was to give you the facts. Facts are there and by analysing the facts, you can come to your conclusion. So far as the recovery is concerned *...(Interruptions)...*

SHRI ANAND SHARMA: Sir, there is something in your statement which has just been noticed and which is far more revealing. Sir, in para 3(iv), it is mentioned "On 19th December, 2003, Secretary of the Commission, wrote a letter to the Minister of Defence that pursuant to a submission made by the learned Counsel for the Union of India, Hon'ble Chairman has directed that equipment relating to the past defence transactions at various places may be inspected...".

So, it was the Government which proposed, which facilitated *...(Interruptions)...*

SHRI PRANAB MUKHERJEE: Yes, that is correct, absolutely correct. That is why I am saying *...(Interruptions)...* That is why I am saying *..(Interruptions)...* That is why I am saying that they suggested the Commission could have said, "No, I don't want". Nothing prevented the Commission to say, "Well, I will have to visit it. But all these have to be connected by the regular service. I will go on my own". Every Commission has visited that. A large number of persons visit; I am entitled to use the Avro aircraft; but till that time, almost one year is going to be passed, except visiting the frontier, for going to Kolkata or to Mumbai or to Chennai, I did not use the Defence aircraft. Yes, if I want to go to Leh, I will have to use it, because that is the rule. So, the Commission could have said. The other point is as to what would be the procedure of the recovery. And, here, from the beginning, what I find is that there were lot of issues which were not very clear. A Commission was appointed by the then Ministry of Personnel. The Cabinet Secretary is issuing directive that it will have to be serviced by the Defence Ministry. Inquiry is against the Defence Ministry. But, the then Cabinet Secretary suggested that he would answer the Parliament Questions. Expenditure and salary of the Commission will be paid by the Ministry of Personnel. But, other expenses will be borne by the Ministry of Defence. This thing was not quite clear. The then Government put the whole issue, as if something has to be done in a hurry and all these things were not tied up. I would no like to *...(Interruptions)...* I don't know those things. You understand very well. Now, it is true, as one hon. Member mentioned, and still today we are, for instance, my party, the Indian National Congress Party has taken the responsibility to pay 5 crores of rupees to the Defence Ministry. Mr. Oscar Fernandes, I don't know whether he is here, he has already paid one instalment. Some other political parties are yet to do so because they have used the Defence aircraft. They are entitled. The Prime Minister is entitled. But when the Prime Minister uses the Defence aircraft for political purposes, and not for official purposes, he has to pay. And, the Defence Ministry has raised a hefty bill against the Indian National Congress, and the Indian National Congress is regularly paying it. Therefore, this is also a case which is to be examined. But, I do not know who will pay. Somebody will say, "I am not paying, you do whatever you like to do." Actually,

somebody has stated that. Therefore, those are the issues which are, to my mind, not strictly-speaking within the purview of the Statement which I have made. I am repeating, the objective of my statement is not to malign anybody, not to pass on judgements on anybody. But, as certain facts have come; hon. Members demanded; and I am duty-bound to give the factual position to the hon. Members, I have exactly done that. Nothing more, nothing less than that. Thank you.

श्री मंगनी लाल मंडल (बिहार)**:** मैं माननीय मंत्री जी यह जानना चाहता हूं तथा जिसके बारे में श्री राजीव शुक्ल की भी जिज्ञासा थी कि क्या वही व्यक्ति फूकन है**,** जो जांच आयोग के चेयरमैन हैं या दूसरा कोई और व्यक्ति है?

SHRI PRANAB MUKHERJEE: Sir I have no such information. I think, only my colleague, the Home Minister can, through intelligence agencies, reply this. We don't have any such information.

The Code Of Criminal Procedure (Amendment) Bill, 1994 (Contd.)

SHRI SHIVRAJ V. PATIL: Sir, I would like to thank the hon. Members who participated in this debate and who made very good points.

One of the points was that delays take place in courts, and whether they should take place in the Legislature also in making laws. Sir, this Bill was introduced in 1994 by Shri Shankar Rao Chavan. Then it was referred to the Standing Committee and the Standing Committee gave its report. Later on, the Bill could not be taken up because the House was disssolved; Lok Sabha was dissolved. Then, again, the Bill was introduced, and it was again referred to the Standing Committee. Mr. Pranab Mukherjee was the Chairman of the Committee which looked into the amendments suggested by the Government. He made many, many suggestions, and these suggestions have been accepted by us, and we are trying to incorporate these suggestions in the law, that is, the Criminal Procedure Code. Sir, it is because of this that the delay has taken place. Delays have taken place because the House was dissolved in between; delays have taken place because the matter was referred to the Standing Committee more than once. So, I hope that the hon. Members in the House understand these facts.